IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO.44 OF 2001

1. The Government of Goa,
   through its Chief Secretary,
   Secretariat,Panaji-Goa;

2. The Dy. Collector South-II &
   Land Acquisition Officer,
   South Goa, Margao-Goa..... PETITIONERS

VERSUS

1. Ivo Agnelo Santimano
   Fernandes, r/o. House No.391,
   Carvota, Loutolim,
   Salcete-Goa;

2. Herbert Santimano Fernandes,
   r/o. House No.391,
   Carvota Loutolim,
   Salcete - Goa;

3. Nancy Fernandes Vieira
   Menezes, r/o Aquem Alto,
   Margao - Goa;

4. Filomena Vieira Menezes,
   r/o. Aquem Alto,
   Margao - Goa;

5. Celina Barbosa Fernandes,
   w/o Decree Holder No.1,
   r/o House No.391,
   r/o Carvota, Loutulim,
   Salcete - Goa;

6. Ramira Fernandes,
   r/o House No.391,
   Carvota, Loutolim,
   Salcete - Goa ..... RESPONDENTS.

Mr. V.P. Thali, Addl. Advocate General, with Mr. H.R. Bharne, Government Advocate, for the Petitioners.

Mr. M.P. Almeida, Advocate for the Respondents.

CORAM : S. RADHAKRISHNAN,J.

DATED : AUGUST 16, 2002.

ORAL JUDGMENT

By this Civil Revision Application, the State Government of Goa through its Chief Secretary, has challenged the Order dated 18th August,2000 passed by the learned District Judge, South Goa, at Margao in Execution Application No.3 of 1998, contending that the learned District Judge, South Goa in the said Execution Application has committed an error apparent on the face of it while directing the Applicant to pay interest as indicated in Para 6 of the Order. The learned Counsel for the Petitioners does not dispute the liability of the State to pay interest at the rate of 15% from 1st April 1996 to 8th April 1996. What is being disputed is the award of interest subsequent thereto, i.e. from 9th April 1996 to 7th January 2000.

2. The brief facts in the above matter are: A Notification under Section 4 of the Land Acquisition Act was issued on 6th September, 1984. Finally an award was passed. The original Claimants were Respondents No.1, 2, 3 and one Ana Conceicao Antonieta Santimano Fernandes and after the Reference Court made the award the said Ana died and in lieu thereof the present Respondents No.4, 5 and 6 in this Civil Revision Application are impleaded

as legal heirs of the said deceased who was one of the original Claimants in the said Reference Application. The enhanced award under Section 18 of the Land Acquisition Act was passed on 19th August, 1992 whereby it was held that the Claimants were entitled to severance charges at the rate of 20% of the said rate of 45 per square metre in respect of non-acquired portion of land with an area of 37,731 square metres. Similarly it was also held that the Petitioners were entitled to compensation with regard to the compound wall existing along the boundary of the part of the acquired land with a total length of 610 metres, at the rate of Rs.52/- per running metre.

3. On 11th March 1996, the said Ana Conceicao Antonieta Santimano Fernandes alias Ida Santimano Fernandes expired leaving a will dated 19th April, 1995 whereby the said Ana Conceicao had bequeathed the additional compensation to her son Herbert Santimano Fernandes, Respondent No.2.

4. In pursuance of the said enhancement awarded by the District Court, the State Government issued four cheques dated 29th March 1996 amounting to Rs.2,06,426/- in favour of Ivo Agnelo Santimano Fernandes, i.e. Respondent No.1 herein, another

cheque for Rs.2,06,437/- in favour of Herbert Santimano Fernandes, Respondent No.2 herein, a third cheque in favour of Ana Conceicao Antonieta Santimano Fernandes for a sum of Rs.2,06,436/- and the fourth cheque in favour of Nancy Fernandes for a sum of Rs.2,06,437/-, being Respondent No.3 herein. It may be noted that the aforesaid cheques drawn in favour of Respondent No.1 and Respondent No.2 were duly collected by both Respondents No.1 and 2. However, Respondent No.3 Nancy did not collect the cheque though issued in her favour for a sum of Rs.2,06,437/-. Similarly, even Ana Conceicao Antonieta did not collect the cheque drawn in her favour for a sum of Rs.2,06,436/- inasmuch as the said Ana Conceicao had already expired on 11th March, 1996 whereas the cheque was dated 29th March, 1996. It may be noted here that none of the Respondents, i.e. Respondents No.1, 2 nor Respondent No.3, or even the legal heirs of the said Ana Conceicao informed the State i.e. the State of Goa that the said Ana had died on 11th March, 1996 or that the said Ana had bequeathed her share of additional compensation payable by the Government in favour of Herbert by will dated 19th April, 1995.

5. The State Government, after preparing the aforesaid cheques, on 1st April 1996 issued a

letter to Ana Conceicao Antonieta Santimano Fernandes alias Ida Santimano Fernandes as well as Respondents Nos. 1 to 3 to collect their respective cheques on 8th April 1996. However, neither Nancy nor the legal heirs of Nancy collected the cheques and no one also informed the State regarding the death of the said Ana Conceicao occurred on 11th March, 1996.

6. Finally, the Execution Application was filed by Ivo Agnelo Santimano Fernandes, Herbert Santimano Fernandes for recovery of the balance amount along with interest accrued thereon. This Execution Application No.3 of 1998 was filed before the learned District Judge, South Goa, Margao who passed the Order on 18th August,2000 whereby the learned Judge has directed as under:-

> "6. The decree holders have not contested the figures mentioned in the reply, Exh. 20 dated 15/7/2000 filed by the judgment debtors, which show that an amount of Rs.8,80,372/- was due and payable to them upto 31/3/96. Decree holders nos. 1 and 2 would be therefore, entitled to receive further interest at the rate of 15% from 1/4/96 to 8/4/96 on the said sums of Rs.2,06,436/-and Rs.2,06,437/- respectively. Likewise, decree holder no.1 would also be entitled to receive further interest at the rate of 15% on Rs.60,000/- from 1/4/96 to

> 7/1/2000 and decree holder no.2 would also be entitled to receive further interest at the rate of 15% on Rs.3,52,873/- from 1/4/96 to 7/1/2000. Judgment debtors are hereby directed to pay the same to the said decree holders nos. 1 and 2, respectively."

7. The learned Addl. Advocate General, who is appearing on behalf of the Petitioners herein, strongly contended that the learned District Judge had committed an error on the face of it inasmuch as a bare perusal of Sections 28 and 34 of Land Acquisition Act read with Order XXI, Rule 1 of Code of Civil Procedure, 1908, would clearly indicate that the State was not liable to pay any additional interest as directed by the learned Judge except for the period from 1st April 1996 to 8th April 1996. The contention of the learned Addl. Advocate General is that two of the original Claimants, in fact, pursuant to the communication by the Petitioners had promptly collected their respective cheques, being Ivo Agnelo Santimano Fernandes a sum of Rs.2,06,476/- and Herbert Santimano Fernandes a sum of Rs.2,06,437/-. However, the third Claimant, Nancy Fernandes, though was communicated that a cheque for Rs.2,06,437/- was kept ready, she did not come to collect the same. Similarly, Ana Conceicao Antonieta Santimano Fernandes also did not collect the cheque for a sum

of Rs.2,06,437/-. The learned Addl. Advocate General also pointed out that the Petitioners were not at all informed of the death of the said Ana Conceicao and also they were not informed that pursuant to the Will dated 19th April,1995, the additional compensation payable to Ana Conceicao was bequeathed by her to Herbert Santimano Fernandes.

8. The learned Addl. Advocate General pointed out that the provisions of Sections 28 and 34 of the Land Acquisition Act, 1894 read as under:-

> **" 28. Collector may be directed to pay interest on excess compensation.-** If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court :
>
> Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof

> which has not been paid into Court before the date of such expiry.
>
> **34. Payment of interest.-** When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited:
>
> Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."

9. Apart from the above, the learned Addl. Advocate General also pointed out the provisions of Order XXI, Rule 1 of the Code of Civil Procedure, 1908, wherein the relevant portion reads as under:-

> **"1. Modes of paying money under decree.-** (1) All money, payable under a decree shall be paid as follows, namely:-
>
> (a)... ... ...
>
> (b) out of Court, to the decree-holder by postal money order or through a bank, or by any other mode wherein payment is evidenced in writing; or

(c) ... .

... ...
... ...
... ...

(5) On any amount paid under clause (b) of sub-rule (1), interest, if any, shall cease to run from the date of such payment :

Provided that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be."

10. The learned Addl. Advocate General, therefore, contends that as far as the State is concerned, they had actually tendered and paid the money to the original Claimants by drawing four cheques for the amount mentioned hereinabove with regard to the four original Claimants by cheques dated 29th March, 1996 and also by communicating by letter dated 1st April 1996 that the Claimants ought to come and collected their respective amount payable under the cheques on 8th April 1996. The learned Addl. Advocate General also pointed out that in pursuance thereof, in fact, the Respondents

Nos. 1 and 2 had promptly come and collected the amounts payable whereas Ana Conceicao as well as Nancy did not collect the amount payable to them. Therefore, the contention of the learned Counsel is that once the State Government prepares a cheque and keeps it ready for the Claimants to come and collect, there is no duty cast on State to deposit the same in the Court unless and until the State is informed that Ana could not claim the amount and also that Ana had bequeathed the said amount to Herbert etc. There is no dispute at all that such a notice was duly sent to Nancy and Ana. There is also no dispute that the said Nancy as well as the legal heirs of Ana Conceicao had not communicated to the Petitioners regarding the death of Ana Conceicao as well as the fact that the amount due to Ana Conceicao was bequeathed to Herbert. The learned Addl. Advocate General stressed on the proviso to Order XXI, Rule 1 which clearly mentions that if a decree-holder refuses to accept or avoids to accept the payment made through a Bank, the interest shall cease to run from time on which the money was tendered to him through Bank. To put in other words, if the decree-holder either refuses to accept the amount or avoids its acceptance when the same is tendered to him, then any payment of interest thereon ceases to run from that date. Therefore,

the contention of the learned Addl. Advocate General is that the amount was duly calculated and the cheques were also drawn in favour of the said Nancy as well as Ana Conceicao which were not collected at all and now the Respondents herein cannot turn round and state that the State is liable to pay interest thereon from 1st April 1996 till 7th January 2000 which is the date on which the aforesaid amount payable to Ana Conceicao was paid over to Herbert as per the Will and similarly the amount payable to Nancy also was collected by Respondents No.1 and 2 herein on her behalf. Therefore, the contention of the learned Addl. Advocate General is that as far as the Petitioner State is concerned, they had kept the amount of interest payable ready from 29th March 1996 and also had asked the original Claimants to come and collect the same from 8th April,1996. Therefore, from 8th April 1996 the Petitioners are not liable at all in any manner whatsoever to pay any interest as sought to be awarded by the learned District Judge in the said Execution Application.

11. The learned Addl. Advocate General referred to the following Judgments in support of his contention:

Jaiwant Laxman P. Sardesai and etc. etc. v. Government of Goa, Daman and Diu and another etc. (AIR 1987 Bom. 214) wherein this Court was interpreting the language of Section 28 of the Land Acquisition Act with regard to grant of interest. Relying on the Judgment of the Hon'ble Apex Court in **Raghubans Narain Singh v. Uttar Pradesh Government (AIR 1967 SC 465),** the categorical view of the Full Bench is as under:-

> "In view of the dictum laid down by the Supreme Court, it is obvious that it is not obligatory on the Court to award interest either under S.28 or the enhanced interest under the amended proviso, though it must be made clear that the discretion to be exercised is judicial in nature and not arbitrary. In normal course the claimant is entitled to the award of interest under S.28 of the Act and also to enhanced interest under the amended proviso to S.28, and unless specific case is made out, the claimant could not be deprived of the advantage. It should not be overlooked that the proceedings in acquisition are compulsory in nature and the claimant must be awarded all the benefits provided under the statute unless it is shown by the acquiring authority that the claimant has disentitled himself to avail of the same."

12. To put in other words, the Full Bench

was of the view that the power to award interest is discretionary.

13. Under the aforesaid facts and circumstances, the learned Addl. Advocate General submits that ex facie reading the provisions of Sections 28 and 34 of the Land Acquisition Act and also of Order XXI, Rule 1 of the Code of Civil Procedure, 1908, it is clear that the Claimants in this matter cannot insist upon that the Petitioners State ought to deposit the amount in Court and that the Petitioners State is not entitled to pay the amount directly to the Claimants and that must only deposit the amount in Court. The learned Addl. Advocate General submitted that, as clearly indicated above, the Petitioner State duly informed to the original Claimants of the fact that cheque dated 29th March 1996 were kept ready and they were all requested to collect the same on 8th April 1996 but except for Respondents No.1 and 2 i.e. Ivo Agnelo and Herbert, others did not collect the same. The non-collection cannot be faulted upon and the Petitioners cannot be foisted with additional liability of interest from 8th April 1996. Also the learned Addl. Advocate General admitted that the Petitioner State will pay whatever amount of interest due and payable from 1st April 1996 to 8th

April 1996 and not subsequent thereto inasmuch as the Petitioner was not at fault and it was purely the Respondents' fault in not collecting the amount when the same was made available to them. In these circumstances, the learned Addl. Advocate General submitted that the learned District Judge had committed a patent error of law in not construing the aforesaid provisions of Land Acquisition Act i.e. Sections 28 and 34 in the context of Order XXI, Rule 1 of the Code of Civil Procedure,1908, in that manner.

14. The learned Counsel appearing on behalf of the Respondents, Shri Almeida, strongly contended that Section 28 makes it abundantly clear that the amount has to be only paid in Court and the Petitioner State had committed a default and they cannot escape the liability to pay the interest. The learned Counsel Shri Almeida pointed out that Section 28 contemplates payment of such excess in the Court whereas Section 34 contemplates that the amount can be paid or deposited. Therefore, the contention of the learned Counsel is that as far as Section 28 is concerned, the interest has to be only paid in Court and otherwise there is liability on the part of the State to pay interest. In that behalf, Shri Almeida also brought to my notice the

provision of Section 53 of the Land Acquisition Act, which reads as under:-

> "53. Code of Civil Procedure to apply to proceedings before Court.- Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the Court under this Act."

15. According to the learned Counsel, the provision of Order XXI, Rule 1 of the Code of Civil Procedure cannot come in the way of the contention of the Respondents inasmuch as the said provision is inconsistent with the provisions of Land Acquisition Act, 1894, that is to say, the learned Counsel contended that the bar with regard to grant of interest as provided under Order XXI, Rule 1 proviso will not apply in the instant case and their liability is purely covered under Section 28 of the Land Acquisition Act. The learned Counsel strongly contended that the learned District Judge had not committed any error apparent on the face of the record and had rightly awarded the interest.

16. Shri Almeida referred to a Judgment of the Hon'ble Apex Court in **Sunder v. Union of**

India [2001(7) Supreme 37] and placed strong reliance on Paragraphs 13, 14 and 15 which read as under:-

> "13. Question of payment of interest would arise only when the compensation is not paid or deposited on or before the date of taking possession of the land. It is inequitable that the person who is deprived of the possession of the land, on account of acquisition proceedings is not given the amount which law demands to be paid to him, any delay thereafter would only be to his detriment. There must be a provision to buffet such iniquity. It is for the purpose of affording relief to the person who is entitled to such compensation when the payment of his money is delayed that the provision is made in section 34 of the Act. That section is extracted below:
>
> "34. **Payment of Interest.-** When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited.
>
> Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum

shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."

14. When the court is of opinion that Collector should have awarded a larger sum as compensation the court has to direct the Collector to pay interest on such excess amount. The rate of interest is on a par with the rate indicated in Section 34. This is so provided in Section 28 of the Act which is extracted below:

> "If the sum which, in the opinion of the court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into court.
>
> Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on

> the amount of such excess or part thereof which has not been paid into Court before the date of such expiry.'

15. Thus interest has to accrue as per Section 34 and Section 28 of the Act on the compensation awarded, whether it is as per the award initially passed by the Collector or by the Court later. What is meant by "the compensation" awarded ? Both sides cited different definitions for the word "compensation" as contained in different lexicographys. In "Words and Phrases" (Permanent Edn.) different connotations of the word "compensation" have been delineated. One of them relates to the law of eminent domain, where compensation means recompense in value, a quid pro quo, and must be in money. Another is relating to the property taken for public use. Then it is the fair market value at the time of taking it. From the Constitutional perspective the word 'compensation' for the property taken was understood as the just equivalent of the value of the property. But when compensation is regarded as a statutory obligation the aforecited definitions need not detract the courts in fathoming the real import of it. The exercise can be done with the aid of the provisions in the statutes. So what the Court, in the context of land acquisition, has to decide is how the Act has designed the compensation vis-a-vis the liability to pay interest. In this context we have to read Section 23 of the Act. It is extracted below:

> "23. **Matters to be considered in determin-**

ing compensation.- (1) In determining the amount of compensation to be awarded for land acquired under this Act, the court shall take into consideration--

firstly,the market value of the land at the date of the publication of the notification under Section 4, sub-section (1);

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from hi other land;

fourthly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the

acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land.

(1A) In addition to the market value of the land above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

(2) In addition to the market-value of the land, as above provided, the court shall in every case award a sum of thirty per centum on such market-value, in consideration of the compulsory nature of the

acquisition."

17. Shri Almeida also referred to another decision of Apex Court in **Prem Nath Kapur and another v. National Fertilizers Corpn. of India Ltd. and others [(1996) 2 SCC 71]** wherein he placed reliance in Paragraphs 12, 13, 14, 15 and 16, which read as under:-

> "12. It is clear from the scheme of the Act and the express language used in Sections 23(1) and (2), 34 and 28 and now Section 23(1-A) of the Act that each component is a distinct and separate one. When compensation is determined under Section 23(1), its quantification, though made at different levels, the liability to pay interest thereon arises from the date on which the quantification was so made but, as stated earlier, it relates back to the date of taking possession of the land till the date of deposit of interest on such excess compensation into the court. Equally, when the appellate court under Section 54 further enhances the compensation, interest is payable on such excess amount determined under Section 23(1). In other words, the liability to pay interest arises as and when the compensation is further enhanced and liability to pay interest would be coterminous with the payment of the amount under Section 34 from the date of taking possession till date of payment or deposit or under Section 28 or Section 54 from the date of taking possession till the date of deposit of such excess amount into the

court. The liability to pay interest is only on the excess amount of compensation determined under Section 23(1) and not on the amount already determined by the Land Acquisition Officer under Section 11 and paid to the party or deposited into the court or determined under Section 26 or Section 54 and deposited into the court or on solatium under Section 23(2) and additional amount under Section 23(1-A).

13. Thus we hold that the liability to pay interest on the amount of compensation determined under Section 23(1) continues to subsist until it is paid to the owner or interested person or deposited into court under Section 34 read with Section 31. Equally, the liability to pay interest on the excess amount of compensation determined by the Civil Court under Section 26 over and above the compensation determined by the Collector/Land Acquisition Officer under Section 11 subsists until it is deposited into court. Proprio vigore in case of further enhancement of the compensation on appeal under Section 54 to the extent of the said enhanced excess amount or part thereof, the liability subsists until it is deposited into court. The liability to pay interest ceases on the date on which the deposit into court is made with the amount of compensation so deposited. As held earlier, the computation of the interest should be calculated from the date of taking possession till date of payment or deposit in terms of Section 34 or deposit into court in terms of Section 28, as the case may be.

14. Equally, the right to make appropriation is indicated by necessary implication, by the award itself as the award or decree clearly mentions each of the items. When the deposit is made towards the specified amounts, the claimant/owner is not entitled to deduct from the amount of compensation towards costs, interest, additional amount under Section 23(1-A) with interest and then to claim the total balance amount with further interest. The ratio of **Joginder Singh v. State of Punjab** has no application to the facts of this case. Right to compensation and the quantification thereof are two distinct concepts. The right to compensation arises when the land vests in the State while its quantification may be concluded at a later stage through several hierarchical stages referred to hereinbefore. The question therein was whether the High Court while enhancing the compensation would direct payment of interest on enhanced amount at 4 per cent per annum. This Court held that the distinction made by the High Court in payment of interest from date of taking possession till date of its judgment was incorrect. Accordingly, it directed payment of interest @ 6 per cent per annum on the enhanced compensation from the date of taking possession of the land till date of payment.

15. Equally, the contention that the claimant is entitled to interest on solatium is also not warranted by express provisions under Section 23(2), i.e., "in addition to" market value, solatium was required to be paid. Section 34 or Section

28, as the case may be, fastens liability to pay interest only on amount of compensation or such excess amount of compensation or part thereof determined under Section 23(1). In other words, by virtue of the language of Section 23(2), viz., "in addition to the market value", as provided in Section 23(1), solatium becomes payable. Compensation under Section 23(1), by necessary implication, excludes the liability to pay interest on solatium. Equally, the question of payment of solatium on additional amount was also considered by this Court in **P. Ram Reddy v. Land Acquisition Officer** where it was held that no solatium is payable on additional amount payable under Section 23(1-A). So too, no interest is payable on additional amount under Section 23(1-A) on other components except on compensation or excess compensation or part thereof determined under Section 23(1) over and above the award under Section 11, by Civil Court under Section 26 or on appeal under Section 54, respectively.

16. The ratio in Meghraj case is equally inapplicable to the appropriation of debt under the Act. It is seen that by operation of Section 534 of the Act, Order 21, Rule 1 being inconsistent wit the express provisions contained in Sections 34 and 28, stands excluded. The ratio therein, therefore, is applicable only to a debtor and creditor in an ordinary civil suit governed by the provisions of the CPC. Order 21, Rule 1 being inconsistent with the express provisions contained in Sections 34 and 28 of the Act,

> it cannot stand extended to the cases covered by the Act. It is unfortunate that these provisions were not brought to the attention of this Court when it decided **Mathunni Mathai case,** which make **all** the difference. With due respect to our learned brethren who decided that case, we are, therefore, constrained to observe that **Mathunni Mathai case** cannot be taken to have laid down the correct law."

18. Shri Almeida also placed reliance in another decision of the Supreme Court in **State of H.P. and others v. Dharam Das [(1995) 5 SCC 683]** wherein the learned Counsel strongly relied on Para 3 of the said Judgment which reads as under:-

> "3. Following that direction the award has been made thus:
>
> "Accordingly, the award was announced by the Land Acquisition Collector and the respondent was paid as under:
>
> (a) Compensation for the land Rs.1750.00
>
> (b) Interest @ 12% on Rs.1750 (from Oct. 1972 to 31-3-1987)
>
> in the nature of equitable compensation as per order dated 23-7-1986 of Hon'ble High Court Rs.3045.00
>
> (c) Amount awarded @ 12% from Oct.1972 to March 1987 under Section 23(1-A) of the Land Acquisition Act Rs.3045.00
>
> (d) Solatium @ 30% Rs. 525.00
> Rs.8365.00

A reading thereof clearly indicates that advance possession was taken in 1972, though notification under Section 4(1) of the Act was published on 19-2-1986. The Court has awarded under Section 23(1-A) additional amount at 12% per annum of the compensation from 19-10-1972 to March 1987. The question, therefore, is whether the Court is empowered to award 12% interest, in addition to benefits under Section 23(1-A) of the Act as amended under Amendment Act 68 of 1984. The controversy is no longer res integra. It is settled law by catena of decisions of this Court. In **Mir Fazeelath Hussain v. Special Dy. Collector, Land Acquisition,** a Bench of three Judges, to which one of us B.L. Hansaria, J. was a member, dealt with the power of the Court to grant interest on equitable consideration and held thus: (SCC pp. 213-14)

> "10. It has also been submitted by Shri Madhava Reddy that higher rate of interest may be ordered to do equity between the parties. We are unable to concede, as, had the present been a case of non-awarding of any interest, we would have done so, because, interest in such cases may become payable on equity, for it is meant to make good the loss suffered by a person due to delayed payment. This view has been reiterated recently by this Court in Kalimpong Land & Building Ltd. v. State of W.B. in which payment of interest was ordered, even when acquisition was under Requisitioning and Acquisition of Immovable Property Act, 1952, which statute has made no specific provision,

> unlike the Act at hand, for payment of interest. But equity has no role when the question relates to rate of interest. Whether the rate of interest should be 6% or 9% is not a matter which would require invocation of court's equitable jurisdiction. The same has to be governed by statutory provision. Had the rate of interest been too low, we could have perhaps on equity granted some relief. But 6% has been the rate for very long period insofar as the Act is concerned as the enhancement came only in 1984 whereas the Act is of 1894. So, we are not satisfied if equity demands granting of relief in question."

Similar view was taken by this Court in several decisions. It is settled legal position that when the statute deals with payment of interest to the claimants either under Section 31 or Section 28 of the Act, the Court has no power to award interest in a manner other than the one in which the statute prescribes payment. It is seen that in a case where decision has been taken exercising the urgency power under Section 17(4) of the Act and the award was made subsequent to the taking over possession, obviously the claimant would be entitled to payment of interest ;under Section 31 from the date of taking possession till the amount is deposited pursuant to the award of the Collector under Section 11. On

> reference, if the compensation is enhanced under Section 28 of the Act and the proviso thereto the claimants would be entitled to the rates of interest specified therein. Apart from these two provisions, there is no other provision under the Act empowering the Court to award interest on equitable grounds, in addition to statutory rates of interest prescribed under the Act. Equitable consideration has no role to play in determination of the compensation and the manner of awarding interest as enjoined under the Act. The Act is to be administered in the manner laid in the Act and in no other way. As a concomitance, the equity jurisdiction of the Court is taken out and the Act enjoins the Court to grant interest as per the statutory rates specified in the Act."

19. The learned Counsel for the Respondents, therefore, contended that in the light of the aforesaid Judgments the Petitioner State was dutybound to award interest to the Claimants right upto 7th January, 2000 when the amount was actually paid to them. The contention of the learned Counsel for the Respondents is that the provisions of Order XXI, Rule 1 proviso of Code of Civil Procedure 1908 cannot at all come to the rescue of the Petitioner inasmuch as the Land Acquisition Act, 1894 was a code in itself and Section 28 of the Land Acquisition Act makes it abundantly clear that the amount of interest ought to be paid in Court and there is no alternative provided whereas Section 34

contemplates payment or deposit in Court. Therefore, the contention of the learned Counsel is that the only way in which the excess amount can be paid to the party is to pay the same in the Court by depositing in the Court. There is no question of the Petitioners paying directly to the party which is impermissible as per Section 28 of the Land Acquisition Act.

20. Under these circumstances, the learned Counsel contended that in view of the aforesaid Judgments and the provisions of law make it abundantly clear that the District Judge was very much right in awarding interest upto 7th January, 2000 and therefore, the learned Counsel for the Respondents prayed that the above Civil Revision Application be dismissed.

21. After having heard the learned Counsel at length and perusing the relevant provisions of law and the judgments cited therein, the main contention of the learned Counsel for the Respondents appears to be that the Petitioner State had no right whatsoever to make any payment directly to the party with regard to the excess amount granted by the Reference Court except to pay the same in the Court as provided in Section 28 of the

Land Acquisition Act. To put in other words, even if the State wants to pay directly, the said excess amount had to be paid in Court. This argument would result in a situation of absurdity in the sense that in the very same case the amounts were duly collected by Respondents No.1 and 2 on 8th April 1996 as per the information sent,but the Respondents No.1 and 2 can very well turn round and claim that though they have been paid the amount, the State is very much liable to pay interest, as such payment was contrary to the provisions of Section 28 of the Land Acquisition Act. The argument of the learned Counsel for the Respondents, if it were to be logically taken to its end, then the provisions of Sections 28 and 34 would be rendered absurd in the sense that the Claimant can very well collect the excess amount and turn round after a few years and say that the amount was not deposited in the Reference Court and claim interest thereon. This interpretation is totally unsustainable as the same would result in a chaotic situation inasmuch as every claimant could directly accept the same and thereafter make a claim after few years that the State was liable to pay the amount as the same was not deposited.

22. As far as the contention of the

learned Counsel for the Respondents that Section 53 of the Land Acquisition Act would clearly prohibit the Petitioners from invoking the Order XXI, Rule 1 proviso of the Code of Civil Procedure, 1908, is concerned, the said contention cannot also be sustained because there is no inconsistency as far as Order XXI, Rule 1 proviso and the provisions of Sections 28 and 34 are concerned. In fact, the observations of the Apex Court as referred to in Prem Nath's case in Para 16 were in the context of the decisions of the cases of Meghraj v. Bayabai (AIR 1970 SC 961) as well as Mathunni Mathai v. Hindustan Organic Chemicals Ltd. [(1995) 4 SCC 26]. Both the aforesaid judgments were dealing with the issue of appropriation of the amounts towards the interest or towards the principal. In that context, the Apex Court has observed in paragraph 16 that Order XXI, Rule 1 of the Code of Civil Procedure, 1908, may be inconsistent with what is contained in Sections 34 and 28 of the Land Acquisition Act. In the instant case, there is no case of appropriation of the excess amount with regard to principal or interest. The instant case only deals with the award of interest on the excess amount which was not deposited in the Court. Admittedly, in this case the amounts were duly kept ready by cheques drawn in favour of the original Claimants. Two of the

Claimants had claimed the same in time whereas the other two Claimants did not claim as stated hereinabove. The Petitioner State obviously cannot be faulted for the same.

23. As rightly pointed out by the learned Addl. Advocate General, even award of interest under Section 28 itself is discretionary and after the Award, the amount was duly paid to the Respondents. The Respondents did not come to collect the same. Under the aforesaid facts and circumstances, the impugned Judgment of the learned District Court cannot be sustained at all. The same is patently contrary to the provisions of law as pointed out hereinabove. The error is apparent on the face of the record as mentioned above.

24. For the aforesaid reasons, the Civil Revision Application is made absolute in terms of prayer clause (a) which reads as under:-

> (a) That the papers and proceedings in Execution Application No.3/98 before the Court of District Judge South Goa, Margao be called for and after perusing the same, this

Hon'ble Court be pleased to quash and set aside the impugned order dated 18th August, 2000,"

with costs.

S. RADHAKRISHNAN,J.

ac.